

Priority

Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119, to foreign patent applications NL 1025127 and NL 1025821 and PCT application NL2004/000894, *however it still does not appear to be proper.*

On June 23rd, 2006 the applicant submitted a copy of each of the NL patent applications and a copy of the PCT application- however, none of the submitted applications' disclosures disclose the invention of this instant application. All appear to disclose the invention of US application 10584215. The submitted copies of the NL patent applications and PCT application each have cover sheets with their respective application numbers listed on them (NL 1025127 and NL 1025821) and PCT NL2004/000894 listed as the international application number, but all of the copies of the supposed foreign priority documents submitted with each cover sheet are directed to the invention disclosed in US application 10584215, and not the invention disclosed in this instant US application 10584216. There appears to be a difference in the disclosures named on the individual cover sheets versus the disclosures submitted as copies of the foreign priority documents. The Examiner has attached all three submitted applications so the applicant can see the discrepancies.

Since the examiner previously objected the foreign priority claim in this application and the correct filings were not submitted in response to the objection, the examiner and her supervisor called the attorney of record to let him know that there appeared to be a mix up in what was being claimed versus what was being filed. An account for that call can be found in the attached interview summary and copied below:

The Examiner and her Supervisor called the attorney of record on July 1st 2010 to let him know there appeared to be some mix up in his claim for foreign priority since all copies of submitted foreign documents appear to be directed to an entirely different invention. The Examiner had previously noted the claim for foreign priority did not appear correct in the first Office action of January 22nd, 2010. In the response filed April 21st, 2010 the applicant's representative responded by saying that the foreign priority to NL 1025127 & NL 1025821 and PCT/NL2004/000894 were indeed correct. The examiner reviewed the submitted copies again and also went to the WIPO website and EPO website to review the documents cited and realized that the applicant has apparently submitted copies of foreign patent applications that do not correspond with the applications he is claiming foreign priority to. This was explained to Mr. McDowell in the phone call of July 1st, 2010 and he said he would look into it and give the Office a call back. In a return phone call Mr. McDowell left a message for the Examiner saying that in PAIR he could see the cover sheet of the priority claim document submitted and thought only the correct PCT cover sheet was submitted and that he was not sure what documents the Examiner was looking at since the noted PCT application viewed in WIPO online appeared to be the correct application.

Although the applicant may have a valid foreign priority claim to appropriate foreign filed applications, the applicant has failed thus far to correctly provide such foreign filed applications in form of correctly submitted copies of the foreign documents since the two foreign applications and PCT application noted above were all submitted as disclosing an entirely different invention from that disclosed in the instant application.

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It appears there are inconsistencies with documents submitted and the documents named on the cover sheets. The Examiner has attached all three submitted applications so the applicant can see the discrepancies.

The applicant is required to provide correct foreign priority documents if this instant applicant does indeed have a foreign priority claim that can be made.

Information Disclosure Statement

1893.03(g) Information Disclosure Statement

in a National Stage Application

[R-3]

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When all the requirements for a national stage application have been completed, applicant is notified (Form PCT/DO/EO/903) of the acceptance of the application under 35 U.S.C. 371, including an itemized list of the items received. The itemized list includes an indication of whether a copy of the international search report and copies of the references cited therein are present in the national stage file. The examiner will consider the documents cited in the international search report, without any further action by applicant under 37 CFR 1.97 and 1.98, when both the international search report and copies of the documents are indicated to be present in the national stage file. The examiner will note the consideration in the first Office action. There is no requirement that the examiners list the documents on a PTO-892 form. See form paragraphs 6.53, 6.54, and 6.55 (reproduced in MPEP § *>609.03<). Otherwise, applicant must follow the procedure set forth in 37 CFR 1.97 and 1.98 in order to ensure that the examiner considers the documents cited in the international search report.

This practice applies only to documents cited in the international search report relative to a national stage application filed under 35 U.S.C. 371. It does not apply to documents cited in an international preliminary examination report that are not cited in the search report. It does not apply to applications filed

under 35 U.S.C. 111(a) claiming the benefit of an international application filing date. As noted in the previous office action, the foreign and non-patent literature documents were not provided and were not considered. Applicant has now provided the missing copies. Examiner has considered all references, as she believes applicant has made a good faith effort to comply with 37 CFR 1.97; however, she is not certain if a fee is due since the original IDS did not comply. Applicant is encouraged to determine if a fee for IDS filed after a first action is due to ensure the consideration was valid. Customer assistance with fee requirements and payments is available at 800-786-9199

37 CFR 1.97. Filing of information disclosure statement.

- (a) *In order for an applicant for a patent or for a reissue of a patent to have an information disclosure statement in compliance with § 1.98 considered by the Office during the pendency of the application, the information disclosure statement must satisfy one of paragraphs (b), (c), or (d) of this section.*
- (b) *An information disclosure statement shall be considered by the Office if filed by the applicant within any one of the following time periods:*
 - (1) *Within three months of the filing date of a national application other than a continued prosecution application under § 1.53(d);*
 - (2) *Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application;*
 - (3) *Before the mailing of a first Office action on the merits; or*
 - (4) *Before the mailing of a first Office action after the filing of a request for continued examination under § 1.114.*
- (c) *An information disclosure statement shall be considered by the Office if filed after the period specified in paragraph (b) of this section, provided that the information disclosure statement is filed before the mailing date of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application, and it is accompanied by one of:*
 - (1) *The statement specified in paragraph (e) of this section; or*
 - (2) *The fee set forth in § 1.17(p).*
- (d) *An information disclosure statement shall be considered by the Office if filed by the applicant after the period specified in paragraph (c) of this section, provided that the information disclosure statement is filed on or before payment of the issue fee and is accompanied by:*
 - (1) *The statement specified in paragraph (e) of this section; and*
 - (2) *The fee set forth in § 1.17(p).*
- (e) *A statement under this section must state either:*

(1) *That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or*

(2) *That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement.*

(f) *No extensions of time for filing an information disclosure statement are permitted under § 1.136. If a bona fide attempt is made to comply with § 1.98, but part of the required content is inadvertently omitted, additional time may be given to enable full compliance.*

(g) *An information disclosure statement filed in accordance with section shall not be construed as a representation that a search has been made.*

(h) *The filing of an information disclosure statement shall not be construed to be an admission that the information cited in the statement is, or is considered to be, material to patentability as defined in § 1.56(b).*

(i) *If an information disclosure statement does not comply with either this section or § 1.98, it will be placed in the file but will not be considered by the Office.*

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 10-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Zink (DE20109056). Zink discloses a safety device (figures 1& 2) for a fall restraint, comprising: anchoring means (5) to which the fall restraint can be coupled directly or indirectly, and fastening means (9) that make a firm and durable connection to a wall (figure 1), the fastening means comprise a flexible fastening flap (9) from which a fastening net (8) extends (figure 2), and the anchoring means are connected via the fastening net to the flexible fastening flap (figure 2); wherein the fastening net is

polygonal shaped and is attached to the fastening flap at more than one side of said polygonal shape (figure 2); wherein the fastening net is integrated in the fastening flap (figure 2); wherein the fastening net is strengthened with longitudinal threads and transverse threads (figure 2); wherein the fastening net, and therefore the roof covering material, is manufactured at least partially from a plastic material (description, page 1, paragraph 1, sentence 1); wherein the fastening flap forms part of an optionally unrolled roll of roof covering material (figures 1& 2); the fastening net is fixed to an inlay in the roof covering material (figure 1) and is incorporated therewith in the roof covering material (figures 1 & 2); and wherein the anchoring means comprise an eyelet/ring/loop (5);

Response to Arguments

Applicant's arguments with respect to the claims and prior art of Rosenblum have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's submission copies of any foreign or non-patent literature of an information disclosure statement under 37 CFR 1.97(c) prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to COLLEEN M. QUINN whose telephone number is (571)272-6289. The examiner can normally be reached on 8:30AM-5:00PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine Mitchell can be reached on (571) 272-7069. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/KATHERINE W MITCHELL/
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